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NORTHBROOK - February 20, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street SW
Washington, D.C. 20554

Subject: Petition for Reconsideration: FCC Report and Order 00-400

Dear Ms. Salas:

This letter petitions the FCC for reconsideration of the FCC Report and Order FCC 00-400 (the "Report and Order") (Docket 99-216) that would permit certain telecommunications equipment covered by FCC Part 68 ("Part 68") to be sold in the United States based solely on a supplier's declaration of conformity (SDoC). Underwriters Laboratories Inc. (UL) does not believe the SDoC process offers purchasers, acceptance interests and the American Public the necessary and appropriate level of assurance regarding the performance of these products and their effect on the reliability of the public telecommunications network. The performance and reliability of the public telecommunications network is a crucial element of the U.S. Safety System's ability to protect life, health, property and the environment.

UL is an independent, not-for-profit, private-sector conformity assessment body with over 100 years of experience in achieving its primary mission of testing for public safety. UL's safety programs, services and Standards for Safety have been the backbone of the U.S. Safety System. The familiar "UL in a Circle" and UL's other certification marks are truly the "Marks of Safety" for products produced and sold throughout the world. UL has been testing telecommunications equipment to FCC requirements since the early 1980s, based on our laboratories' accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) operated by the National Institute for Standards and Technology (NIST). Recently, the FCC recognized UL as a Telecommunications Certification Body (TCB) under the FCC program for certification of telecommunications equipment by independent conformity assessment organizations in accordance with FCC regulations, and based on FCC required accreditation from the American National Standards Institute (ANSI).

The Report and Order is intended to streamline the process for permitting Customer Premises Equipment covered under Part 68 to enter the U.S. market. The Report and Order would allow this equipment to be sold in the U.S. with either a TCB Certification or an SDoC. In UL's opinion, the supplier's declaration of conformity process does not offer an appropriate degree of confidence that products placed on the market will consistently meet technical requirements. UL and the Telecommunication Industries Association (TIA) submitted comments on Docket 99-216. For equipment covered under Part 68, we recommended that certification by a TCB or a producer's/

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supplier's use of the FCC Declaration of Conformity ("FCC DoC") procedure could effectively streamline the regulatory process while maintaining a sufficient degree of confidence that equipment complies with the applicable regulatory requirements. At the very minimum, the FCC should require producers/suppliers to use laboratories accredited by a FCC recognized accreditor to develop test data that supports their demonstration of conformity with regulatory requirements. Therefore, conformity of telecommunications equipment subject to Part 68 requirements should be demonstrated through either TCB Certification or the currently in place FCC DoC procedure.

UL's serious concerns about the Report and Order include:

- SDoC will not measurably improve time to market, or reduce costs for compliant equipment, but will reduce confidence in compliance of Customer Premises Equipment with technical regulations;
- The Report and Order will lead to performance and financial inequities between producers/suppliers of Customer Premises Equipment that choose to use TCB Certification versus those that choose to use a supplier's declaration of conformity;
- The Report and Order does not establish an effective post-market surveillance system for Customer Premises Equipment brought to the U.S. market based solely on an SDoC;
- The public record does not support the FCC's decision to utilize a supplier's declaration of conformity for Customer Premises Equipment; and,
- No data has been produced for public review to support the Commission's contention that the use of a supplier's declaration of conformity for Customer Premises Equipment will satisfy the public interest regarding the equipment's compliance with technical regulations.

For your further information, an annex on conformity assessment for Customer Premises Equipment is attached to this petition letter.

Supplier's declaration of conformity will not improve time to market and reduce product cost for compliant equipment

Many attempts have been made to justify the use of SDoC by mentioning delays in bringing products to the market supposedly caused by government or third-party conformity assessment programs. This is simply incorrect. The FCC DoC procedure should take exactly the same amount of time as supplier's declaration of conformity because *the same testing* is required and should be expected. Allowing a supplier's declaration of conformity without requiring the supporting data to be developed by an accredited testing laboratory forgoes confidence with no real improvement in time to market for equipment. Furthermore, since testing will only be carried out once for a representative product

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sample, and all of the produced units will enter the market based on that one set of tests, the cost of laboratory accreditation per unit placed on the market is insignificant.

TCB Certification is generally achieved between one (1) and five (5) business days. In addition to the existing fourteen (14) U.S. TCBs, seven (7) European Union (EU) Conformity Assessment Bodies (CABs) have been recognized under the operational phase of the EU/US MRA for the Telecommunications Sectoral Annex. With this development, there is even greater availability of certification bodies ensuring better responsiveness for reducing time to market at a competitive cost.

To the extent that TCB Certification might take longer than SDoC, delays are usually caused by a product's lack of compliance with the relevant technical requirements when it is submitted. Redesign times to address non-compliant aspects of a product's construction or performance are often considered in overall producer/supplier turnaround time, but this time is not the result of government or third-party involvement. Products designed to be fully compliant with the relevant technical standards generally have much shorter application-to-certification times. In reality, third-party testing and certification does not add any significant time to the process, even for products that need to be redesigned since the same redesign issues should be identified and resolved during the SDoC process.

Lack of equivalence between conformity assessment procedures

The Report and Order will permit either TCB Certification or SDoC for Customer Premises Equipment. Logically and legally, this approach would be valid *only* if its premise is true, i.e., that these two conformity assessment procedures are in fact equivalent. Plainly, that is not the case. TCBs are required by the FCC to attain and maintain accreditation for laboratory testing and certification functions, including technical competency, ability to interpret FCC Rules, retesting of production samples under ongoing surveillance and freedom from conflict of interest. Producers/suppliers using SDoC will have no similar accreditation obligations for the laboratory that develops the test data or for the manufacturers to carry out ongoing surveillance to verify continuing compliance of production products with regulatory requirements.

No effective post-market surveillance

Without exception, advocates of SDoC insist that it must be accompanied by a meaningful and effective post-market surveillance program. Post-market surveillance is the mechanism by which regulatory authorities attempt to ensure that products in the market comply with the regulatory requirements. This requires regulatory resources and technical competence with requirements. Post-market surveillance as usually carried out by the regulatory authority involves the following:

- 1) Obtaining the producer's/supplier's technical file that supports the SDoC,
- 2) Determining if the technical file demonstrates compliance with the relevant requirements,
- 3) Procuring products from the market,

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- 4) Determining if the product meets the relevant regulatory requirements, and
- 5) Penalizing producers/suppliers that place non-compliant equipment on the market.

The regulator is obligated to facilitate the withdrawal of non-compliant products from the market, usually through a product recall. Effective post-market surveillance requires a substantial regulatory resource commitment. U.S. experience in other sectors, such as consumer products, demonstrates that a well conducted recall may be successful in removing only 15 to 20% of the non-compliant products from the market. This means that 80 to 85% of the non-compliant products may remain in the market, and in the case of telecommunications equipment, potentially still connected to the telecommunications network.

Compared with TCB equipment certification that includes ongoing surveillance carried out by the TCB at the factory where the equipment is produced, the use of a supplier's declaration of conformity with regulatory post-market surveillance shifts a significant portion of the resource burden from the producer/supplier to the regulatory authority. TCB Certification which includes effective ongoing surveillance of production samples significantly limits the need for regulatory post-market activities by providing a greater degree of confidence in equipment's compliance with regulatory requirements before they enter the market, on a continuing basis.

The EU has implemented the so-called "New Approach" product regulatory schemes based solely on SDoC and regulatory post-market surveillance. In practice, resources for properly conducting post-market surveillance are scarce. Although current post-market surveillance programs in the EU are limited, these limited programs are finding a significant number of products in the EU market that do not comply with the applicable regulatory requirements, especially in the area of electromagnetic compatibility.

The record does not support the sole use of supplier's declaration of conformity

Of the sixty-six (66) Docket 99-216 documents, only three organizations' comments supported the use of SDoC while many comments supported TCB Certification and the use of the FCC DoC procedure. Initial and reply written comments from the Telecommunications Industries Association, which represents a broad group of organizations with different interests involved in telecommunication products and services, supported TCB Certification and the FCC DoC procedure. We understand that another interest group, including a TIA member, had provided comments in favor of supplier's declaration of conformity during an ex-parte meeting. These comments obviously conflict with the documented position of the TIA as a whole.

The TCB Program has been in operation for just six months, but has already dramatically reduced the regulatory time to market while upholding confidence that Customer Premises Equipment fully meets technical criteria promoting safety, reliability and reduction in the likelihood of harm to the telecommunications network.

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No data on the estimated compliance of equipment brought to the market based solely on a supplier's declaration of conformity

The FCC did not provide any data to establish the level of compliance of Customer Premises Equipment brought to the market utilizing a supplier's declaration of conformity. This type of information would be needed to support the regulatory decision that sole use of a SDoC would satisfy the public's interest in the compliance of Customer Premises Equipment and the reliability of the telecommunications network.

Confidence and consistency issues with supplier's declaration of conformity

A supplier's declaration of conformity may be based on test data developed at any laboratory the producer/supplier chooses. The laboratory that conducts the testing need not be accredited by a suitable accreditation body. Without appropriate laboratory accreditation, there would not be sufficient confidence in the test methods, interpretation of rules, equipment used and hence the test data developed. When this test data is used to support a supplier's declaration of conformity, there may not be sufficient confidence that the SDoC adequately demonstrates the equipment's conformity with FCC regulations. Without effective ongoing surveillance of declared compliant equipment over the production life cycle, the supplier's declaration process as described in the Report and Order will not measure up to the TCB Certification process.

Permitting supplier's declaration of conformity as an equivalent alternative to TCB Certification or the FCC DoC procedure will significantly increase the risk of non-compliant products reaching the marketplace. Simply put, the supplier or producer responsible for the pre-market testing and issuing the SDoC has a strong financial incentive to get its product to the marketplace as quickly and as cheaply as possible. TCB Certification and FCC DoC procedure provide a counter-balance to this financial incentive that does not exist with the supplier's declaration of conformity.

The SDoC process also provides no assurance that different suppliers and producers will interpret and apply the technical requirements in the same way as the FCC and the TCBs. TCB Certification can provide a high level of consistency. At the request of the FCC, a TCB Council was established to act as a forum for TCBs to develop consensus approaches and request formal interpretations of requirements from the FCC. All TCBs are eligible to join the Council, and this approach helps assure the consistent application of requirements. While UL fully supports the move toward the utilization of consensus approaches, it should be recognized there will always be a need to provide consistent interpretation of technical requirements. The SDoC approach does not provide a mechanism to assure consistent and uniform interpretation of requirements.

Summary

TCB Certification provides the highest level of confidence that products comply with regulatory requirements. Since the FCC DoC procedure allows a producer/supplier to declare conformity based

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on test data from an accredited laboratory, it provides more confidence than a supplier's declaration of conformity without adding any time to market for compliant equipment. The FCC DoC procedure should therefore replace the SDoC process described in the Report and Order. The FCC should require, at the minimum, that producers/suppliers use accredited laboratories to develop test data that supports their product's demonstration of compliance with regulatory requirements. Since the FCC DoC procedure that requires use of accredited laboratories is already in place, conformity of telecommunications equipment subject to Part 68 requirements should be through TCB Certification or the FCC DoC procedure.

These two options will allow for a very flexible conformity assessment paradigm while maintaining confidence in the conformity of equipment, minimizing inequities between conformity assessment procedures and controlling the FCC's market surveillance burden.

If you have any questions about this letter of petition, we are prepared to discuss our comments in greater detail.

Sincerely,

Donald A. Mader,

Donald A. Mader

Executive Vice President and

Chief Operating Officer

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**Informative Annex on Conformity Assessment Procedures
For Customer Premises Equipment**

Supplier's declaration of conformity (SDoC)

A supplier's declaration of conformity is intended to provide confidence to acceptance interests (Note: For Customer Premises Equipment, acceptance interests include consumers, users, telecommunications service providers, police, fire and emergency services and the FCC) using a process carried out by, or under the direct control of, the supplier or producer. As with all other forms of conformity assessment, the acceptability of a supplier's declaration is determined solely by acceptance interests. By definition, a supplier's declaration is accepted (only) when it fully satisfies the confidence needs of acceptance interests that compliance will be achieved and maintained to the degree necessary. This is a critical concept when the conformity of the product can impact safety, health and protection of property and the environment. The reliability of the telecommunications network is therefore a vital element in the U.S. Safety System.

The supplier or producer generally has complete discretion over the process used to support a supplier's declaration of conformity. The supplier or producer carries out or controls the process with no review or oversight by an independent, third party.

TCB Certification

TCBs are required to meet accreditation requirements that include both laboratory testing and certification functions. The FCC's critical accreditation requirements include:

- Freedom from conflict of interest,
- Demonstrated general and specific technical competence,
- Ability to interpret FCC Rules, and,
- Surveillance activities to enhance continuing compliance of production equipment with requirements.

These accreditation requirements result in a high level of confidence in the objectivity and accuracy of the test data developed and the certification activities carried out by TCBs. TCBs perform ongoing surveillance to evaluate the certified equipment's continuing compliance with regulatory requirements. Of the three conformity assessment procedures discussed, equipment certified by TCBs provides the greatest level of confidence that regulatory requirements are met.

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FCC Declaration of Conformity (FCC DoC)

The FCC DoC procedure requires that test data used to support a Declaration of Conformity be developed at a laboratory (including a producer's/supplier's laboratory) accredited to conduct such testing by a suitable accreditation body. This accreditation provides a degree of confidence in test methods and equipment used, as well as the test data developed. This test data is then used to support the Declaration of Conformity to FCC requirements made by the producer/supplier. No third-party surveillance of the equipment's continuing compliance is performed under the FCC DoC procedure. Since the laboratories are accredited for testing only, and there is no surveillance, there is less confidence that equipment meets and continues to meet regulatory requirements than equipment certified by a TCB, but more confidence than equipment brought to the market based on a supplier's declaration of conformity (i.e., SDoC < FCC DoC < TCB Certification).

Crucial differences between TCB Certification, FCC DoC and SDoC

The testing of equipment to determine compliance with FCC requirements is one of the essential aspects of conformity assessment for telecommunication equipment. The data developed by these tests play a crucial role in determining if a piece of equipment will operate on the established telecommunications infrastructure without reducing the reliability of critical communications. While the FCC DoC procedure does not offer the same confidence level as TCB Certification, the FCC DoC procedure does provide assurance that good laboratory practices are used. In contrast, a supplier's declaration of conformity gives the purchaser, the public and the acceptance interest no real assurance that the supplier or producer has used sound and accepted technical criteria or appropriate laboratory practices.